

EXHIBIT 5



David E. Mills
(202) 776-2865
dmills@cooley.com

Via FedEx

September 17, 2019

The Hon. Thomas T. Cullen
United States Attorney for the Western District of Virginia
U.S. Courthouse and Federal Building
255 West Main Street, Room 130
Charlottesville, Virginia 22902

Re: Subpoenas and *Touhy* Request for Documents and Testimony Relating to the Unite the Right Rally and James Fields Attack in Charlottesville, Virginia on August 11-12, 2017

Dear Mr. Cullen:

I write on behalf of Plaintiffs in *Sines v. Kessler*, Case No. 3:17-cv-00072, currently pending in the U.S. District Court for the Western District of Virginia (the “Litigation”) to request information related to the “Unite the Right” rally and related events that took place on August 11 and 12, 2017, in Charlottesville, Virginia, including the conduct of James Fields (together, the “Unite the Right Events”), that is in the possession, custody or control of the Federal Bureau of Investigation (“FBI”) or the United States Attorney’s Office for the Western District of Virginia. This request is made pursuant to Department of Justice’s *Touhy* requirements, 28 C.F.R. § 16.21 *et seq.*, and pursuant to the attached subpoenas for documents and testimony. Please advise as soon as possible if service of a subpoena on the appropriate custodian of records will be necessary.

The Nature of the Litigation

The Litigation arises out of the events before, during, and after the weekend of the Unite the Right rally. As you know from your own investigations and cases brought against James Fields, the RAM defendants, and other individuals involved in the events of that weekend, the Defendants organized not only the August 12 rally but also the unpermitted torch lit march through the University grounds to the Rotunda. We have evidence that they spent months planning their tactics and methods to incite, trigger and bait violence and rioting as a pretext to justify their goal of attacking African Americans, Jews and others who support them, based on the Defendants’ racial, ethnic, and religious animus toward those targeted groups. On August 12, in furtherance of the Defendants’ conspiracy, Defendant James Fields, intending to further those same goals, maliciously drove his vehicle into a peaceful, walking crowd of counterprotesters and their supporters, killing Heather Heyer and injuring many others.

Plaintiffs are several of the individuals injured as a result of the Defendants’ unlawful actions orchestrating and participating in the violence in Charlottesville on August 11 and 12. Defendants



Thomas T. Cullen
September 17, 2019
Page Two

are the individuals and organizations that conspired to plan, promote, and carry out those violent events.

Plaintiffs brought the Litigation seeking redress for the injuries Defendants caused. We allege statutory civil rights claims under 42 U.S.C. § 1985(3), 42 U.S.C. § 1986, and Va. Code § 8.01-42.1, and common law claims for civil conspiracy, negligence per se, assault and battery, and intentional infliction of emotional distress.

We have closely followed the Charlottesville case against James Fields and the federal criminal cases you have brought, and it is plain that some of the evidence you and your team has gathered is highly relevant to our civil rights case. Accordingly, we request the following documents. We are happy to discuss this request, of course.

Documents Requested

We request the following categories of documents:

1. All information or data extracted, imaged, copied, or otherwise preserved from any electronic device of any Defendant, including but not limited to, the mobile telephone of James Fields;
2. All documents concerning any Defendant, including James Fields.
3. All documents concerning the car attack by James Fields in Charlottesville, Virginia on August 12, 2017 (“Car Attack”); or any United the Right Event.
4. All communications between or among any Defendant, including James Fields between January 1, 2015 and the present including, but not limited to: (a) emails, (b) text messages; (c) messages sent or received on any internet or social media platform, such as Google, Facebook, Instagram, Twitter, or Discord; and (d) phone calls;
5. All documents created, shared, viewed, posted, sent, modified, or authored by any Defendant concerning race, ethnicity, religion, violence, or any group that promotes white supremacy or white nationalism.
6. All photographs, video recordings, or audio recordings concerning any Defendant, the Car Attack, or any Unite the Right Event;
7. All recordings and transcripts of telephone calls concerning any Defendant, the Car Attack, or any Unite the Right Event, including calls or communications to or from James Fields during his detention after his arrest in August 2017;



Thomas T. Cullen
September 17, 2019
Page Three

8. All documents, information or data obtained from any third party concerning any Unite the Right Event, or any Defendant, including documents obtained from Google, Facebook, Instagram, Twitter, Discord, or any social media provider;
9. All geolocation data concerning any Unite the Right Event, the Car Attack, or any Defendant, including Google, Facebook, Instagram, Twitter, Discord, or any other social media provider;
10. All statements made by or concerning any Defendant, including statements concerning planning, preparing for, attending, or participating in any Unite the Right Event, the Car Attack, or James Fields's role therein;
11. All documents constituting or concerning witness interviews or interviews of law enforcement personnel concerning any Unite the Right Event, the Car Attack, or any Defendant, including transcripts, audio or video recordings, memoranda, summaries, or notes;
12. All documents constituting or concerning any expert analysis, report, or testimony concerning any Unite the Right Event or the Car Attack, including but not limited to any documents received from Virginia state or local law enforcement or prosecution officers or investigators, any social media analysis, fingerprint analysis, DNA analysis, or incident reconstruction or any other analysis or report;
13. All documents concerning physical evidence collected during any investigation of any Unite the Right Event, the Car Attack, or any Defendant, including but not limited to fingerprints, DNA, or weapons; and
14. All documents concerning any property damage, injuries, or death caused by the Car Attack, any Unite the Right Event, or any Defendant, including any medical records, police reports, witness statements, or any clothing, accessories, or other personal effects collected at the sites of the Car Attack or any Unite the Right Event.
15. All documents constituting or concerning any police report or record, or law enforcement report or record, concerning the Car Attack or any Unite the Right Event, including any document prepared by or on behalf of any agent, officer, detective or investigator.

For clarity, these requests include information obtained from search warrants executed in connection with the investigation and criminal trial of James Fields, or any other sources of such information.



Thomas T. Cullen
September 17, 2019
Page Four

Testimony Requested

Plaintiffs request the following testimony:

1. Testimony of Special Agent Brent Meyer concerning the information requested above; and/or
2. Testimony of another FBI employee, if necessary, sufficient to authenticate the information requested above.

Relevance and Necessity of the Documents and Testimony

The Litigation seeks civil remedies for serious violations of law committed by Defendants, including James Fields. Those violations include conspiracy to deprive citizens of their rights to speak, assemble, and enjoy equal protection of the laws of the United States through acts of violence and intimidation based on racial animus; failure to prevent such deprivation of rights despite the knowledge and power to do so; and causing significant physical, mental and emotional injury – all based on invidious and discriminatory racial animus. The Defendants include some of the most notorious white supremacists, hate groups and organizations with long histories of committing violence and acts of domestic terrorism, and individuals who willfully support those organizations. In addition, James Fields has been convicted of murder and other serious felonies in both state and federal court, and Plaintiffs seek to redress some of the injuries he caused. This Litigation seeks to demonstrate the harm caused by these hate groups and their supporters and to prevent race-based violence in the future.

The requested information is relevant to, among other things, the conspiracy behind the violence at the Unite the Right rally and related events, including the extent of James Fields' participation in the event, his motive for attacking a peaceful crowd of counterprotesters, and the attack he committed and injuries he caused on August 12, 2017. Plaintiffs seek information and evidence broader than the evidence introduced in Fields' criminal cases, because the civil Litigation asserts a conspiracy, civil rights claims and theories that are broader in some ways than the criminal charges on which Fields was indicted and convicted.

During the criminal proceedings against James Fields, including sentencing, Defendants could not access the requested information from Fields directly or from the government prosecution arms. Plaintiffs understand, however, the FBI possesses many documents concerning Fields, including his electronic devices (mainly his phone) and (more importantly) all the data contained therein.



Thomas T. Cullen
September 17, 2019
Page Five

Additional Considerations

The United States has not been named as a party to this matter, nor is it reasonably anticipated that the United States will become a party.

Plaintiffs agree to pay any applicable fees charged for searching or copying the requested records up to \$1,000, without requesting prior notification of the fees to be charged. If the applicable fees are expected to exceed \$1,000, please let us know prior to filling our request.

Plaintiffs would be willing to discuss alternatives to deposition testimony as a method of authenticating documents. If you have any concerns or wish to discuss the scope of these requests, please contact me at your earliest convenience. Thank you for your attention to this matter.

Sincerely,

David E. Mills
Cooley LLP

Enclosures

cc: AUSA Christopher Kavanaugh, via email (Christopher.Kavanaugh@usdoj.gov)